



California Regional Water Quality Control Board

Santa Ana Region



Linda S. Adams
Secretary for
Environmental Protection

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Arnold Schwarzenegger
Governor

September 2, 2010

Nardy Khan
Orange County Public Works
300 N. Flower Street
Santa Ana, CA 92703

**CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS
CERTIFICATION, PETERS CANYON AND SANTA ANA GARDENS CHANNELS
MAINTENANCE PROJECT, CITIES OF TUSTIN AND SANTA ANA, COUNTY OF
ORANGE, CALIFORNIA (OUR FILE NO. 30-2009-55)**

Dear Ms. Khan:

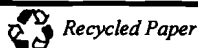
On December 8, 2009, Regional Board staff received an application for a Clean Water Act Section 401 Water Quality Standards Certification (401 Certification) for the above referenced project. Included with the application were the following:

- Documentation showing that an application for a California Department of Fish and Game (CDFG) Lake or Streambed Alteration Agreement for the project has been submitted;
- A statement that a California Environmental Quality Act (CEQA) Notice of Exemption was filed for the project. The applicant has determined the project is considered categorically exempt from the provisions of CEQA, according to CEQA Guidelines Section 15301 (b): Class 1, Existing Facilities;
- A copy of the application for a Department of Army Clean Water Act Section 404 Permit for the project, submitted to the United States Army Corps of Engineers (ACOE); and,
- \$3789.00 as the fee required to process this 401 Certification, as specified by California Code of Regulations, Division 3, Chapter 9, Article 1, section 2200 (a) (3) and as determined by the 401 Certification fee calculator at www.waterboards.ca.gov.

Following the submittal of the application, a copy of the posted CEQA Notice of Exemption for the project was submitted to this office.

This letter responds to your request for certification, pursuant to Clean Water Act Section 401, that the proposed project, described below, will comply with State water

California Environmental Protection Agency



quality standards outlined in the Water Quality Control Plan for the Santa Ana River Basin 1995 (Basin Plan), and subsequent amendments:

1. Project description:

The proposed project entails maintenance activities on the Santa Ana Gardens Channel and Peters Canyon Channel. On the Santa Ana Gardens Channel, upstream of the St. Andrews pedestrian bridge in the City of Santa Ana, approximately 950 square feet (sf) of concrete channel wall along the western side of the Channel and adjacent access areas will be removed and replaced. On the western side of the Peters Canyon Channel, at the confluence of the Santa Fe Channel in the City of Tustin, 930 sf of concrete channel wall will be removed and replaced. In addition, approximately 1,512 tons of 36-inch rock riprap will be placed in the Peters Canyon Channel bed below the confluence of the Santa Fe Channel to replace invert rock that had eroded. Currently, a pool approximately 270 ft. long, 40 ft wide, and up to 5 ft in depth has been created in the eroding channel bed. Wildlife including shore and wading birds, waterfowl, and the southwestern pond turtle (*Actinemys marmorata pallida*) have been observed in and adjacent to the pool.

2. Location: Peters Canyon Channel:
 33.7029° north
 117.8068° west,
 Township 5 South, Range 9W, Section 27,
 Tustin, California, USGS Quadrangle:
- Santa Ana Gardens Channel:
 33.72332 North
 117.8909 West
 T5S, R10W, Section 23,;
 Newport Beach, California, USGS Quadrangle
3. Receiving water: Peters Canyon Channel and Santa Ana Gardens Channel
4. Fill Area: Waters of the U.S., a total of 0.14 acre of temporary impacts
 (Peters Canyon Channel 0.134 acres and Santa Ana
 Gardens Channel 0.003 acre)
5. Dredge volume: NA
6. Federal permit: NWP #13, Bank Stabilization
7. Mitigation:

You have proposed that in the Peters Canyon Channel a pool with similar dimensions, depths, and hydrology as the existing pool described above will be constructed. The created pool will be located immediately adjacent to the existing pool.

You have applied for a Clean Water Act Section 404 nation wide permit from the U.S. Army Corps of Engineers. Pursuant to the California Environmental Quality Act (CEQA), Orange County Public Works determined that the proposed project is categorically exempt from provisions of CEQA. The Regional Board has considered the County's Categorical Exemption in the issuance of this Certification and finds that no changes or alterations to the proposed project are necessary to avoid or mitigate impacts to water quality to a less than significant level. The project is for maintenance of an existing facility that does not expand existing uses, and qualifies for a CEQA Guidelines Section 15301 (Class 1) exemption.

This 401 Certification is contingent upon the execution of the following conditions:

1. The mitigation proposed and as described above will be timely completed.
2. Should the proposed project impact state- or federally-listed endangered species or their habitat, implementation of measures identified in consultation with U.S. Fish and Wildlife Service and the California Department of Fish and Game shall be completed to ensure that these impacts are mitigated to an acceptable level.
3. To reduce impacts to riparian and aquatic habitat resulting from the project all requirements of the CDFG Stream or Lake Alteration Agreement shall be implemented.
4. Substances resulting from project-related activities that could be harmful to aquatic life, including, but not limited to, petroleum lubricants and fuels, cured and uncured cements, epoxies, paints and other protective coating materials, portland cement concrete or asphalt concrete, and washings and cuttings thereof, shall not be discharged to soils or waters of the state. All waste concrete shall be removed.
5. Motorized equipment shall not be maintained or parked within or near any stream crossing, channel or lake margin in such a manner that petroleum products or other pollutants from the equipment may enter these areas under any flow conditions. Vehicles shall not be driven or equipment operated in waters of the state on-site, except as necessary to complete the proposed project. No equipment shall be operated in areas of flowing water.
6. This Water Quality Certification is subject to the acquisition of all local, regional, state, and federal permits and approvals as required by law. Failure to meet any conditions contained herein or any of the conditions contained in any other permit or approval issued by the State of California or any subdivision thereof may result in the revocation of this Certification and civil or criminal liability.

7. The discharger must comply with all conditions and provisions of the U.S. Army Corps of Engineers' Clean Water Act Section 404 Permit(s).

Under California Water Code, Section 1058, and Pursuant to 23 CCR 3860, the following shall be included as conditions of all water quality standards certification actions:

- (a) Every certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section 13330 of the Water Code and Article 6 (commencing with Section 3867) of this Chapter.
- (b) Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to Subsection 3855 (b) of this Chapter and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
- (c) Certification is conditioned upon total payment of any fee required under this Chapter and owed by the applicant.

This discharge is also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ (Order No. 2003-0017-DWQ), "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification" which requires compliance with all conditions of this Water Quality Standards Certification. Order No. 2003-0017-DWQ is available at www.swrcb.ca.gov/resdec/wqorders/2003/wqo/wqo2003-0017.pdf.

This letter constitutes a conditional water quality standards certification. Although we anticipate no further regulatory involvement, if the above conditions are changed, any of the criteria or conditions as previously described are not met, or new information becomes available that indicates a water quality problem, we may formulate Waste Discharge Requirements for the project.

In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of section 401 (d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification.

In response to a suspected violation of any condition of this certification, the SARWQCB may require the holder of any permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the SARWQCB deems



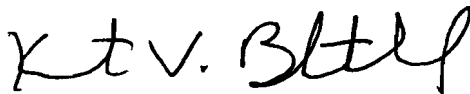
appropriate. The burden, including costs, of the reports shall be reasonable in relation to the need for the reports and the benefits to be obtained from the reports.

In response to any violation of the conditions of this certification, the SARWQCB may add to or modify the conditions of this certification as appropriate to ensure compliance.

Pursuant to California Code of Regulations Section 3857, we will take no further action on your application. This letter constitutes a technically conditioned water quality certification. Please notify our office five (5) days before construction begins on this project.

If you have any questions, please call David G. Woelfel at (951) 782-7960, or Mark Adelson at (951) 782-3234.

Sincerely,



Kurt V. Berchtold
Executive Officer

cc: U.S. Army Corps of Engineers – Jason Lambert
U.S. Environmental Protection Agency, Supervisor of the Wetlands Regulatory
Office – Tim Vendlinski (WTR-8)
State Water Resources Control Board, DWQ - Water Quality Certification Unit
State Water Resources Control Board, OCC – David Rice
California Department of Fish and Game – Russell Barabe